

REMARKS

This document is being filed in response to an Office Action mailed on January 15, 2008. Claims 1-3 and 8-19 are pending in this application and stand rejected. Claims 1-3 and 8-10 are independent. Applicants respectfully request reconsideration in light of the remarks provided below and submit that all the pending claims are in condition for allowance.

Rejection under 35 U.S.C. §102(b)

Claim 11 stands rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,690,100 to Thomas (Thomas). Applicants respectfully submit that Thomas fails to teach or suggest a cage bottom having side walls, the side walls having “an inner surface having a first height and a second height less than the first height” as recited in claim 11 as amended herein. Rather, Thomas is directed to a cage bottom having a “flange around its open top, which defines a flat plane”. (Column 5, lines 30-31)

The cage of Thomas is designed to receive a “confining panel 64” which Thomas states “is necessary to prevent the occupants from gnawing on or destroying the filter material in filter panel of from damaging the shelves.” (Column 5, lines 42-46). One of ordinary skill would understand that the confining panel would span the entire perimeter of the cage. An example of such a confining panel is a wire bar lid described in U.S. Patent No. 5,311,836 assigned to Lab Products, Inc., the assignee of the subject application. If the confining panel does not cover the entire perimeter of the open top of the cage, the occupant would not be prevented from “gnawing on or destroying the filter material” at certain areas where the confining panel was not present, thus frustrating the objective of Thomas to protect the filter material.

Therefore, not only would one of ordinary skill understand that Thomas is directed to a confining panel which spans the entire perimeter of the top of the cage, to modify Thomas otherwise would frustrate the purpose and objectives of Thomas. Thus, Thomas teaches away from any such modification.

Applicants respectfully submit that one of ordinary skill would appreciate that because the confining panel of Thomas spans the entire perimeter of the cage, the inner surface of the walls of the cage would have a constant height. This is in contrast to the invention as claimed, which is requires the side wall of the cage bottom to have “an inner surface having a first height and a second height less than the first height.” Thomas fails to teach or suggest such difference in heights of the inner surface of the cage wall. Rather, as stated above, Thomas teaches away from such a modification at least because one of ordinary skill would understand that to provide different heights of the inner surface of a side wall of the cage would mean the confining panel would not extend throughout the entire perimeter of the top of the cage, which, as established above, would frustrate the goal of Thomas, which Thomas states is “necessary.” Thus Thomas teaches away from a side wall having “an inner surface having a first height and a second height less than the first height” as claimed herein.

Accordingly, at least for the reasons set forth above, Thomas fails to anticipate or render obvious claim 11, and Applicants respectfully request withdrawal of the rejection.

Rejection under 35 U.S.C. §103(a)

In the Office Action, claims 1-3 and 8-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Thomas in view of Applicant Admitted Prior Art (AAPA) or U.S. Patent No. 5,894,816 to Coiro et al. Applicants respectfully submit that Thomas, either taken alone or in combination with either AAPA or Coiro, fails to teach or suggest a cage bottom having “side walls having an inner surface having a first height and a second height at the recesses, the second height being less than the first height” as recited in independent claims 2, 3, 8 and 9 as amended herein.

As discussed above, Thomas teaches away from side walls having different heights and thus teaches away from the invention as claimed. Furthermore, Coiro and AAPA also fail to teach or suggest side walls having different heights, and therefore Thomas, Coiro and AAPA, either taken alone or in combination, fail to render obvious the invention as claimed.

Accordingly, Applicants respectfully submit that claims 1-3 and 8-10 as amended herein are patentable over Thomas in view of AAPA or Coiro and respectfully request withdrawal of the rejection.

Double Patenting Rejection

Claims 1-3, 8-19 stand rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatenable over U.S. Patent Nos. 6,341,581; 6,336,427; or 6,041,741. With regard to claims 12-19, the nonstatutory obviousness-type double patenting rejection is the only outstanding rejection. In the interest of expediting prosecution, without addressing the merits of the rejection, Terminal Disclaimers in compliance with 37 CFR 1.321 are being filed with this

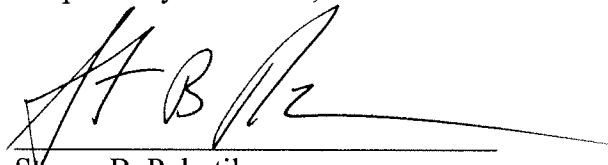
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Amendment and thus Applicants respectfully submit that the rejection of claims 12-19 have been rendered moot. Moreover, claims 12-13 have been rewritten herein into independent form by incorporating all the limitations of the claims from which they previously depended. Therefore, Applicants respectfully submit that claims 12-19 are in condition for allowance. Accordingly, favorable consideration and prompt allowance of this application are respectfully requested.

No fee other than the fee for additional independent claims submitted herewith is deemed necessary in connection with the filing of this Amendment. However, if any fee is required, the Examiner is hereby authorized to charge the amount of such fee to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. B. Pokotilow', is written over a horizontal line.

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